

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE:

B-221379

DATE: January 24, 1986

MATTER OF:

AT&T Technologies, Inc.

## DIGEST:

1. Protest of procurement is dismissed since a protest filed by another concern involving the same procurement is pending before the General Services Administration Board of Contract Appeals. See GAO Bid Protest Regulations, 4 C.F.R. §§ 21.1(a) and 21.3(f)(6) (1985).
2. Where GAO dismisses timely protest of procurement because a protest against same procurement filed by another concern is pending before the General Services Administration Board of Contract Appeals (GSBCA), and GSBCA subsequently dismisses the protest for lack of jurisdiction, initial protester would be free to bring its protest to GAO, provided that it does so within 10 working days of the GSBCA dismissal.

AT&T Technologies, Inc. (AT&T), protests the award of a contract to any firm other than itself under request for proposals (RFP) No. 600-S issued by the Government Printing Office (GPO) on behalf of the Army Integrated Publishing Service. The solicitation is for improving the Army's management, processing, printing, and distribution of publications by acquiring an automated publishing and retrieval service and support system, creating a digital publishing base, and providing access to that data base.

AT&T filed its protest with our Office on January 9, 1986. It presents three grounds of protest: (1) the agency improperly increased an offeror's technical score without a benchmark test of the total integrated system to be used by that offeror; (2) after submission of best and final offers, the agency allowed the same offeror to reduce its price without holding discussions with any other offerors; and (3) an Army evaluator who had access to the proposals was formerly employed by the same offeror and therefore that offeror may have had an unfair advantage in the competition.

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On January 16, 1986, Xerox Corporation (Xerox), filed a protest concerning this same procurement with the General Services Administration Board of Contract Appeals (GSBCA). Before the GSBCA, Xerox alleges the same three grounds of protest as AT&T alleges before our Office, in addition to other complaints concerning Xerox's technical rating. Xerox also alleges that the procurement concerns automated data processing equipment and is subject to the GSBCA's protest jurisdiction under section 2713(a) of the Competition in Contracting Act of 1984 (CICA), 40 U.S.C.A. § 759(h) (West Supp. 1985). We note that on January 21, Volt Information Sciences, Inc., also filed a protest on this procurement with the GSBCA. On the other hand, GPO disputes GSBCA's jurisdiction to decide these protests.

Section 21.1(a) of our Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1985), provides that:

" . . . After an interested party protests a particular procurement or proposed procurement of automated data processing equipment and services to the General Services Administration Board of Contract Appeals under section III(h) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(h)) and while that protest is pending before the Board that procurement or proposed procurement may not be the subject of a protest to the General Accounting Office."

We recognize that GSBCA's jurisdiction in this case is being disputed. Nonetheless, since Xerox's protest of this procurement is pending before the GSBCA, we dismiss AT&T's protest. Comdisco, Inc., B-218276.2, Apr. 4, 1985, 85-1 C.P.D. ¶ 391. See GAO Bid Protest Regulations, 4 C.F.R. § 21.3(f)(6).

AT&T has expressed concern to us that if we should dismiss its protest under 4 C.F.R. § 21.1(a), and if the GSBCA also should dismiss Xerox's protest for lack of jurisdiction, AT&T might be left without a forum for its protest, even though its initial protest to GAO was filed timely. It is not our intention to deprive AT&T of an appropriate forum to hear a timely filed protest. If the GSBCA dismisses Xerox's protest, AT&T would then be free to bring its protest to GAO, provided that it did so within 10 working days of the GSBCA dismissal. 4 C.F.R. § 21.2(a)(2) (1985).

We further note that on January 15, 1986, GPO determined under section 3553(d) of CICA, 31 U.S.C.A.

§ 3553(d) and GAO Bid Protest Regulations, 4 C.F.R. § 21.4(b), that, notwithstanding the pending protest, performance of the contract is in the government's best interest and authorized continued contractor performance. The implementation of the stay provisions under CICA is, of course, the agency's responsibility.

*Harry R. Van Cleve*

Harry R. Van Cleve  
General Counsel